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AT&T Mobility LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re Apple & AT&TM
Antitrust Litigation

Case No. C 07-5152 JW

**ANSWER OF DEFENDANT AT&T
MOBILITY LLC**

ANSWER TO PLAINTIFFS' COMPLAINT

Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendant AT&T Mobility LLC ("ATTM"), by and through its undersigned counsel, hereby answers and asserts defenses to the claims and allegations made by Plaintiffs Herbert H. Kliegerman, Paul Holman, Lucy Rivello, Timothy P. Smith, Michael G. Lee, Dennis V. Macasaddu, Mark G. Morikawa, Vincent Scotti, and Scott Sesso ("Plaintiffs") in their Revised Consolidated Amended Class Action Complaint ("Complaint").

NATURE OF ACTION

1. ATTM admits that Plaintiffs seek to bring claims pursuant to Section 2 of the Sherman Act (15 U.S.C. § 2), the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-12), and the consumer protection laws of 42 states and the District of Columbia on their own behalf and on purported behalf of classes of persons alleged to be similarly situated; Plaintiffs' state consumer protection claims have since been dismissed by the Court. ATTM denies the remaining allegations in this paragraph, including the existence of any cognizable "class" on whose behalf plaintiffs may bring suit.

2. ATTM admits that the iPhone was available for sale on or about June 29, 2007 to consumers in the United States. ATTM further admits that prior to the launch of the iPhone, ATTM entered into a contract with Defendant Apple permitting ATTM to be the exclusive provider of wireless voice and data services for iPhone customers in the United States. ATTM further admits that pursuant to that contract with Apple, Apple received a portion of certain of ATTM's revenues derived from iPhone customers. ATTM denies the remaining allegations in this paragraph.

3. ATTM admits that iPhones sold in the United States are programmed to operate solely on ATTM's wireless voice and data service network. ATTM denies the remaining allegations of this paragraph.

4. ATTM admits that Apple has retained a certain control over design, features and operating software for the iPhone. ATTM lacks knowledge or information sufficient to form a

1 belief as to the truth of the remaining allegations of this paragraph and, on that basis, denies the
2 same.

3 5. ATTM admits that Apple issued iPhone software version 1.1.1 on September 27,
4 2007. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the
5 remaining allegations of this paragraph and, on that basis, denies the same.

6 6. ATTM denies the allegations of this paragraph.

7 7. Plaintiffs' consumer protection claims have been dismissed by the Court. ATTM
8 denies any and all allegations in this paragraph still being pursued.

9 8. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations of this paragraph and, on that basis, denies the same.

11 9. ATTM denies the allegations of this paragraph.

12 10. ATTM denies the allegations of this paragraph.

13 11. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
14 the allegations of this paragraph and, on that basis, denies the same.

15 12. This paragraph of the Complaint sets out the relief sought by Plaintiffs. To the
16 extent a response is required, ATTM admits that Plaintiffs seek such relief but denies that
17 Plaintiffs are entitled to any such relief.

18 **THE PARTIES**

19 13. ATTM admits that Plaintiff Kliegerman entered into an ATTM voice and data plan
20 in July 2007. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
21 the remaining allegations of this paragraph and, on that basis, denies the same.

22 14. ATTM admits that Plaintiff Holman entered into an ATTM voice and data plan on
23 or about June 29, 2007. ATTM lacks knowledge or information sufficient to form a belief as to
24 the truth of the remaining allegations of this paragraph and, on that basis, denies the same.

25 15. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations of this paragraph and, on that basis, denies the same.

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1 16. ATTM admits that Plaintiff Smith entered into an ATTM voice and data plan on or
2 about June 30, 2007. ATTM lacks knowledge or information sufficient to form a belief as to the
3 truth of the remaining allegations of this paragraph and, on that basis, denies the same.

4 17. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations of this paragraph and, on that basis, denies the same.

6 18. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
7 the allegations of this paragraph and, on that basis, denies the same.

8 19. ATTM admits that Plaintiff Morikawa entered into an ATTM voice and data plan.
9 ATTM lacks knowledge or information sufficient to form a belief as to the truth of the remaining
10 allegations of this paragraph and, on that basis, denies the same.

11 20. ATTM admits that Plaintiff Scotti entered into an ATTM voice and data plan on or
12 about July 12, 2007. ATTM lacks knowledge or information sufficient to form a belief as to the
13 truth of the remaining allegations of this paragraph and, on that basis, denies the same.

14 21. ATTM admits that Plaintiff Sesso entered into an ATTM voice and data plan in
15 July 2007. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the
16 remaining allegations of this paragraph and, on that basis, denies the same.

17 22. ATTM admits that Apple manufactures, markets and sells the iPhone, among other
18 consumer electronic devices. ATTM lacks knowledge or information sufficient to form a belief as
19 to the truth of the remaining allegations of this paragraph and, on that basis, denies the same.

20 23. ATTM admits that ATTM is a Delaware limited liability company with its
21 principal place of business located at 1025 Lenox Park Boulevard NE, Atlanta, Georgia 30319-
22 5309. ATTM admits that ATTM is a cell phone service provider that regularly conducts and
23 transacts business in this District, as well as elsewhere throughout New York and the United
24 States. ATTM further admits that it entered into a contract with Apple under which ATTM is the
25 exclusive provider of wireless voice and data services for iPhones sold in the United States.

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JURISDICTION AND VENUE

24. ATTM admits that the Court has original jurisdiction over Plaintiffs' federal law claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over Plaintiffs' state law and Magnuson-Moss Warranty Act claims pursuant to 28 U.S.C. § 1367.

25. ATTM admits that, taking Plaintiffs' jurisdictional allegations to be true, the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

26. ATTM admits that, taking Plaintiffs' venue-related allegations to be true, venue in this District is proper pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

27. ATTM admits that Apple conducted an advertising campaign in spring 2007 to market the iPhone. ATTM further admits that the advertising referenced the iPhone's mobile phone, iPod and Internet communications functions as well as email, visual voicemail, web browsing, maps and searching capability.

28. ATTM admits that the 2G iPhone was made available for retail purchase in the United States on June 29, 2007, at prices of \$499 for the 8GB model and \$599 for the 16GB model, and that some consumers waited in line to purchase an iPhone. ATTM further admits that, at the time the Complaint was filed, Apple and ATTM sold an 8GB version of the 2G iPhone for \$399 and a 16GB version of the iPhone for \$499.

29. ATTM admits that, at the time the Complaint was filed, the iPhone was sold at both Apple's and ATTM's retail and online stores.

30. ATTM admits that it entered into a contract with Apple under which ATTM is the exclusive provider of wireless voice and data services for iPhones sold in the United States. ATTM further admits that iPhone customers in the United States must sign a two-year service contract to obtain ATTM's voice and data services. ATTM denies the remaining allegations of this paragraph.

31. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

32. ATTM denies the allegations of this paragraph.

- 1 33. ATTM denies the allegations of this paragraph.
- 2 34. ATTM denies the allegations of this paragraph.
- 3 35. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 4 the allegations of this paragraph and, on that basis, denies the same.
- 5 36. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 6 the allegations of this paragraph and, on that basis, denies the same.
- 7 37. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 8 the allegations of this paragraph and, on that basis, denies the same.
- 9 38. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 10 the allegations of this paragraph and, on that basis, denies the same.
- 11 39. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 12 the allegations of this paragraph and, on that basis, denies the same.
- 13 40. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 14 the allegations of this paragraph and, on that basis, denies the same.
- 15 41. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 16 the allegations of this paragraph and, on that basis, denies the same.
- 17 42. ATTM admits that it has, under certain circumstances, provided unlock codes for
- 18 non-iPhone handsets if requested by a purchaser.
- 19 43. ATTM denies the allegations of this paragraph.
- 20 44. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 21 the allegations of this paragraph and, on that basis, denies the same.
- 22 45. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 23 the allegations of this paragraph and, on that basis, denies the same.
- 24 46. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 25 the allegations of this paragraph and, on that basis, denies the same.
- 26 47. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
- 27 the allegations of this paragraph and, on that basis, denies the same.
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1 48. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
2 the allegations of this paragraph and, on that basis, denies the same.

3 49. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations of this paragraph and, on that basis, denies the same.

5 50. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
6 the allegations of this paragraph and, on that basis, denies the same.

7 51. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations of this paragraph and, on that basis, denies the same.

9 52. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
10 the allegations of this paragraph and, on that basis, denies the same.

11 53. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
12 the allegations of this paragraph and, on that basis, denies the same.

13 54. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
14 the allegations of this paragraph and, on that basis, denies the same.

15 55. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations of this paragraph and, on that basis, denies the same.

17 56. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
18 the allegations of this paragraph and, on that basis, denies the same.

19 57. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations of this paragraph and, on that basis, denies the same.

21 58. ATTM admits the allegations of this paragraph.

22 59. ATTM admits that GSM and CDMA are two of the competing network
23 technologies for wireless service in the United States. ATTM lacks knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, on that
25 basis, denies the same.

26 60. ATTM admits that the iPhones sold as of the time of, and prior to, the filing of the
27 Complaint are used on ATTM's Edge/GSM facilities. ATTM lacks knowledge or information
28

1 sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, on that
2 basis, denies the same.

3 61. ATTM admits that it, Verizon Wireless, LLC, Sprint Nextel Corp., and T-Mobile
4 USA are currently the four operators that analysts typically describe as “nationwide,” and that
5 ATTM and T-Mobile use GSM/TDMA as their 2G digital technology and Verizon and Sprint use
6 CDMA as their 2G digital technology. ATTM lacks knowledge or information sufficient to form
7 a belief as to the truth of the remaining allegations of this paragraph and, on that basis, denies the
8 same.

9 62. ATTM denies the allegations of this paragraph.

10 63. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
11 the allegations of this paragraph and, on that basis, denies the same.

12 64. ATTM denies the allegations of this paragraph.

13 65. ATTM admits that GSM devices in the United States typically utilize the
14 removable SIM card technology, and that these SIM cards are typically linked to a specific
15 carrier’s network.

16 66. ATTM admits that a SIM card is a specially programmed microchip that inserts
17 into a GSM-compatible mobile device and that the SIM card encrypts transmissions and identifies
18 the user to the mobile network. ATTM further admits that the SIM cards allow users to easily
19 switch their account information between other compatible GSM devices for immediate use.
20 ATTM lacks knowledge or information sufficient to form a belief as to the truth of the remaining
21 allegations of this paragraph and, on that basis, denies the same.

22 67. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations of this paragraph and, on that basis, denies the same.

24 68. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
25 the allegations of this paragraph and, on that basis, denies the same.

26 69. ATTM admits that it has, under certain circumstances, provided unlock codes for
27 non-iPhone handsets if requested by a purchaser. ATTM lacks knowledge or information
28

1 sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, on that
2 basis, denies the same.

3 70. ATTM admits that it has, under certain circumstances, provided unlock codes for
4 non-iPhone handsets if requested by a purchaser. ATTM further admits that it does not provide
5 the unlock code for the iPhone. ATTM denies that any of its actions were unlawful and denies the
6 remaining allegations of this paragraph.

7 71. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations of this paragraph and, on that basis, denies the same.

9 72. ATTM admits that non-Apple programmers made iPhone “unlocking” codes
10 available both for sale and for free on the Internet. ATTM lacks knowledge or information
11 sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, on that
12 basis, denies the same.

13 73. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
14 the allegations of this paragraph and, on that basis, denies the same.

15 74. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
16 the allegations of this paragraph and, on that basis, denies the same.

17 75. ATTM admits that the DMCA was enacted in 1998. The language in the DMCA
18 and in the Federal Register speaks for itself. ATTM denies the remaining allegations in this
19 paragraph.

20 76. ATTM denies the allegations of this paragraph.

21 77. ATTM admits that on January 9, 2007, Apple and ATTM announced that they had
22 entered into an agreement whereby Cingular Wireless (now ATTM) would be the exclusive
23 provider of wireless voice and data services for iPhones sold in the United States. ATTM denies
24 the remaining allegations in this paragraph.

25 78. ATTM admits that it provided to Apple a portion of certain of ATTM’s revenues
26 derived from iPhone customers pursuant to the terms of its initial agreement with Apple. ATTM
27 denies the remaining allegations in this paragraph.

28

1 79. ATTM admits that ATTM offers iPhone purchasers a two-year service contract.
2 ATTM denies the remaining allegations in this paragraph.

3 80. ATTM admits that iPhones sold in the United States are programmed so as to
4 operate solely with ATTM's wireless voice and data service network, and that unlock codes are
5 not provided to consumers. ATTM denies the remaining allegations of this paragraph.

6 81. ATTM admits that Apple retains a certain control over the features, content,
7 software programming and design of the iPhone.

8 82. ATTM admits that ATTM has offered handsets for purchase at prices below the
9 manufacturer suggested retail price of the handset based on the expectation that ATTM will
10 recoup its investment when the customer enters into a contract for service with ATTM. ATTM
11 further admits that customers typically incur an Early Termination Fee if they cancel their ATTM
12 service plan prior to expiration of their service agreement. ATTM lacks knowledge or information
13 sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, on that
14 basis, denies the same.

15 83. ATTM admits that iPhone customers incur a \$175 Early Termination Fee if they
16 cancel their ATTM service plan prior to expiration of their two-year service agreement. ATTM
17 denies the remaining allegations in this paragraph.

18 84. ATTM denies the allegations in this paragraph.

19 85. ATTM denies the allegations in this paragraph concerning ATTM's conduct.
20 ATTM lacks knowledge or information sufficient to form a belief as to the truth of the remaining
21 allegations of this paragraph and, on that basis, denies the same.

22 86. ATTM admits that the language quoted in this paragraph is an accurate quotation
23 from the cited *USA Today* article. ATTM denies all the remaining allegations in this paragraph.

24 87. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
25 the allegations of this paragraph and, on that basis, denies the same.

26 88. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations of this paragraph and, on that basis, denies the same.

28

1 89. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
2 the allegations of this paragraph and, on that basis, denies the same.

3 90. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations of this paragraph and, on that basis, denies the same.

5 91. ATTM admits that unauthorized unlock programs for the iPhone became available
6 on the Internet in the summer of 2007. ATTM lacks knowledge or information sufficient to form
7 a belief as to the truth of the remaining allegations of this paragraph and, on that basis, denies the
8 same.

9 92. ATTM admits that unauthorized unlock programs for the iPhone became available
10 on the Internet in the summer of 2007. ATTM denies the remaining allegations of this paragraph.

11 93. ATTM denies the allegations in this paragraph.

12 94. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
13 the allegations of this paragraph and, on that basis, denies the same.

14 95. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations of this paragraph and, on that basis, denies the same.

16 96. ATTM admits that Apple issued iPhone software version 1.1.1 on September 27,
17 2007. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the
18 remaining allegations of this paragraph and, on that basis, denies the same.

19 97. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
20 the allegations of this paragraph and, on that basis, denies the same.

21 98. ATTM admits that the referenced September 24, 2007 press release contained the
22 quoted language in this paragraph.

23 99. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations of this paragraph and, on that basis, denies the same.

25 100. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
26 the allegations of this paragraph and, on that basis, denies the same.

27 101. ATTM lacks knowledge or information sufficient to form a belief as to the truth of
28 the allegations of this paragraph and, on that basis, denies the same.

102. ATTM admits that Apple issued iPhone software version 1.1.1 on September 27, 2007. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, on that basis, denies the same.

103. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

104. ATTM denies the allegations in this paragraph.

105. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

106. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on that basis, denies the same.

107. ATTM denies the allegations in this paragraph.

108. ATTM admits that Plaintiffs seek to bring this action as a purported “Nationwide Class” class action on behalf of themselves and other alleged to be similarly situated, and propose to act as representatives of the purported class. ATTM denies the remaining allegations in this paragraph, and denies the existence of an alleged “Nationwide Class” as described in this paragraph.

109. ATTM admits that Plaintiffs seek to bring this action as a purported “Consumer Protection Class” class action on behalf of themselves and other alleged to be similarly situated, and propose to act as representatives of the purported class. ATTM denies the remaining allegations in this paragraph, and denies the existence of an alleged “Consumer Protection Class” as described in this paragraph.

110. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph on that basis.

111. ATTM denies the existence of either of the alleged classes. ATTM lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies the same.

112. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph, including subparts a-q.

113. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph.

114. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph.

115. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph.

116. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph.

117. ATTM denies the existence of either of the alleged classes. ATTM denies the remaining allegations in this paragraph.

118. ATTM denies the existence of either of the alleged classes and thus denies the allegations in this paragraph.

119. ATTM denies the allegations in this paragraph.

RELEVANT MARKET ALLEGATIONS

120. ATTM denies the allegations in this paragraph.

121. ATTM denies the allegations in this paragraph.

COUNT I

SHERMAN ACT § 2: UNLAWFUL MONOPOLIZATION OF THE APPLICATIONS AFTERMARKET

122. ATTM repeats and incorporates by reference Paragraphs 1 through 121 of its Answer as if fully set forth here.

123. ATTM denies the allegations of this paragraph.

124. ATTM denies the allegations of this paragraph.

125. ATTM denies the allegations of this paragraph.

126. ATTM denies the allegations of this paragraph.

COUNT II

SHERMAN ACT § 2: ATTEMPTED MONOPOLIZATION OF THE APPLICATIONS AFTERMARKET

127. ATTM repeats and incorporates by reference Paragraphs 1 through 126 of its Answer as if fully set forth here.

128. ATTM denies the allegations of this paragraph.

129. ATTM denies the allegations of this paragraph.

130. ATTM denies the allegations of this paragraph.

131. ATTM denies the allegations of this paragraph.

132. ATTM denies the allegations of this paragraph.

COUNT III

SHERMAN ACT § 2: UNLAWFUL MONOPOLIZATION OF THE VOICE AND DATA SERVICES AFTERMARKET

133. ATTM repeats and incorporates by reference Paragraphs 1 through 132 of its Answer as if fully set forth here.

134. ATTM denies the allegations of this paragraph.

135. ATTM denies the allegations of this paragraph.

136. ATTM denies the allegations of this paragraph.

137. ATTM denies the allegations of this paragraph.

138. ATTM denies the allegations of this paragraph.

COUNT IV

SHERMAN ACT § 2: ATTEMPTED CONSPIRACY TO MONOPOLIZE THE VOICE AND DATA SERVICES AFTERMARKET

139. ATTM repeats and incorporates by reference Paragraphs 1 through 138 of its Answer as if fully set forth here.

140. ATTM denies the allegations of this paragraph.

141. ATTM denies the allegations of this paragraph.

142. ATTM denies the allegations of this paragraph.

143. ATTM denies the allegations of this paragraph.

144. ATTM denies the allegations of this paragraph.

COUNT V

**SHERMAN ACT § 2: CONSPIRACY TO MONOPOLIZE
THE VOICE AND DATA SERVICES AFTERMARKET**

145. ATTM repeats and incorporates by reference Paragraphs 1 through 144 of its Answer as if fully set forth here.

146. ATTM denies the allegations of this paragraph.

147. ATTM denies the allegations of this paragraph.

148. ATTM denies the allegations of this paragraph.

149. ATTM denies the allegations of this paragraph.

150. ATTM denies the allegations of this paragraph.

COUNT VI

STATE LAW UNFAIR AND DECEPTIVE ACTS AND PRACTICES

151. ATTM repeats and incorporates by reference Paragraphs 1 through 150 of its Answer as if fully set forth here.

152. Plaintiffs' consumer protection and unfair and deceptive trade practices claims have been dismissed by the Court. ATTM denies any and all allegations in this paragraph still being pursued.

153. Plaintiffs' consumer protection and unfair and deceptive trade practices claims have been dismissed by the Court. ATTM denies any and all allegations in this paragraph still being pursued.

154. Plaintiffs' consumer protection and unfair and deceptive trade practices claims have been dismissed by the Court. ATTM denies any and all allegations in this paragraph still being pursued.

155. Plaintiffs' consumer protection and unfair and deceptive trade practices claims have been dismissed by the Court. ATTM denies any and all allegations in this paragraph still being pursued.

156. Plaintiffs' consumer protection and unfair and deceptive trade practices claims have been dismissed by the Court. ATTM denies any and all allegations in this paragraph still being pursued.

157. Plaintiffs' consumer protection and unfair and deceptive trade practices claims have been dismissed by the Court. ATTM denies any and all allegations in this paragraph still being pursued.

COUNT VII

MAGNUSON-MOSS WARRANTY ACT

158. ATTM repeats and incorporates by reference Paragraphs 1 through 157 of its Answer as if fully set forth here.

159. ATTM denies the allegations of this paragraph.

160. ATTM denies the allegations of this paragraph.

161. ATTM denies the allegations of this paragraph.

162. ATTM denies the allegations of this paragraph.

COUNT VIII

TRESPASS TO CHATTELS

163. ATTM repeats and incorporates by reference Paragraphs 1 through 162 of its Answer as if fully set forth here.

164. ATTM denies the allegations of this paragraph.

165. ATTM denies the allegations of this paragraph.

166. ATTM denies the allegations of this paragraph.

167. ATTM denies the allegations of this paragraph.

COUNT IX

FEDERAL COMPUTER FRAUD AND ABUSE ACT (18 U.S.C. § 1030)

168. ATTM repeats and incorporates by reference Paragraphs 1 through 167 of its Answer as if fully set forth here.

169. ATTM denies the allegations of this paragraph.

170. ATTM denies the allegations of this paragraph.

COUNT X**CALIFORNIA PENAL CODE § 502**

171. ATTM repeats and incorporates by reference Paragraphs 1 through 170 of its Answer as if fully set forth here.

172. ATTM admits that the iPhone is a computer within the meaning of California Penal Code § 502.

173. ATTM denies the allegations of this paragraph.

174. ATTM denies the allegations of this paragraph.

The remainder of the Complaint consists of Plaintiffs' prayer for relief to which no response is required. To the extent a response is required, ATTM denies that Plaintiffs are entitled to the relief sought in the Complaint or to any relief whatsoever.

GENERAL DENIAL

ATTM denies any allegations of the Complaint, whether express or implied, that are not specifically admitted, denied or qualified herein.

AFFIRMATIVE DEFENSES

ATTM sets forth below its affirmative defenses. By setting forth these affirmative defenses, ATTM does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Moreover, nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiffs' allegations. ATTM reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

As separate and distinct affirmative defenses, ATTM alleges as follows:

1. One or more of the causes of action asserted in the Complaint fails to state a claim for which relief can be granted.

2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

1 3. Plaintiffs' claims are barred, in whole or in part, because they attack conduct that is
2 authorized by the United States laws and that is not subject to prohibition under the antitrust laws.

3 4. Plaintiffs are barred from recovery because ATTM's actions were privileged,
4 justified, excused, were taken for a legitimate business reason not prohibited by law, and/or
5 because ATTM at all times acted in good faith and did not directly or indirectly perform any act
6 whatsoever that would constitute a violation of any right of Plaintiffs or any duty owed to
7 Plaintiffs.

8 5. Plaintiffs' claims are barred, in whole or in part, because all conduct engaged in by
9 ATTM was reasonable, based upon independent, legitimate business and economic justifications,
10 and without any purpose or intent to injure competition.

11 6. ATTM's acts as alleged in the Complaint were made in good faith to meet
12 competition. Plaintiffs' claims are barred, in whole or in part, because ATTM's actions have not
13 tended to destroy competition in any relevant market.

14 7. Any purported monopoly or monopoly power alleged against ATTM has been
15 thrust upon ATTM, has occurred by force of accident, or has occurred by virtue of ATTM's
16 superior skill, foresight, and industry.

17 8. ATTM has not improperly exercised any purported monopoly power against
18 Plaintiffs.

19 9. ATTM is the passive beneficiary of any purported monopoly or monopoly power.

20 10. ATTM had no specific intent to engage in attempted monopolization.

21 11. ATTM does not possess the power to control prices or exclude competition in any
22 relevant market.

23 12. ATTM has not willfully acquired any purported monopoly or monopoly power, nor
24 has ATTM maintained any purported monopoly or monopoly power by exclusionary means.

25 13. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not
26 suffered antitrust injury.

27 14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs, through their
28 actions, assumed the risk that they would suffer the harm they alleged.

1 15. Plaintiffs' claims are barred, in whole or in part, because the damages alleged were
2 caused by the actions of third parties for whom ATTM is not responsible.

3 16. Plaintiffs' claims are barred, in whole or in part, because the damages alleged were
4 caused by Plaintiffs' own actions and not those of ATTM.

5 17. Plaintiffs' claims are barred, in whole or part, by Plaintiffs' lack of standing to
6 assert any or all of the causes of action alleged in the Complaint individually, in a representative
7 capacity, or on behalf of the general public.

8 18. As to those causes of action based upon an alleged breach of warranty, ATTM
9 expressly limited any express warranty and disclaimed any implied warranty that may have
10 otherwise been created or have been in existence.

11 19. Plaintiffs' claims, and those of the purported classes, are barred because this action
12 is not properly maintainable as a class action as alleged by Plaintiffs.

13 20. Plaintiffs' claims, and those of the purported classes, are barred in whole or in part
14 because Plaintiffs are not proper class representatives.

15 21. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs were
16 contributorily negligent.

17 22. Plaintiffs' claims are barred, in whole or in part, by the doctrine of ripeness.

18 23. Plaintiffs' claims are barred, in whole or in part, because ATTM's acts or
19 omissions were not the proximate cause of Plaintiffs' alleged injuries.

20 24. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to provide
21 ATTM with sufficient notice of ATTM's alleged breaches of warranties.

22 25. Plaintiffs' claims are barred, in whole or in part, under the doctrines of waiver
23 and/or estoppel.

24 26. Plaintiffs' claims are barred, in whole or in part, by the doctrine of mootness.

25 27. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of
26 limitations and/or the doctrine of laches.

27 28. Plaintiffs' claims are barred, in whole or in part, because the alleged damages
28 sought are too speculative and uncertain.

1 29. Plaintiffs have failed to mitigate their damages and to protect themselves from
2 avoidable consequences.

3 30. Plaintiffs' claims are barred because Plaintiffs failed to pursue the required
4 alternative dispute resolution.

5 31. Plaintiffs' claims are preempted by the requirements of the Federal Arbitration Act
6 as relates to plaintiffs' contracts with ATTM and Apple.

7
8 WHEREFORE, ATTM prays for the following:

- 9 a. Dismissal of Plaintiffs' claims with prejudice;
- 10 b. A finding that ATTM is not liable to Plaintiffs, or that Plaintiffs' claims are
11 barred, in whole or in part, based on one or more of the affirmative defenses asserted herein;
- 12 c. An award to ATTM of its reasonable actual attorneys' fees and costs of suit
13 pursuant to applicable statutes;
- 14 d. Such other and further relief as the Court deems just.

15
16 DATED: March 18, 2009

Respectfully submitted,

17 **CROWELL & MORING LLP**

18
19 By: /s/ Daniel A. Sasse

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